sIN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIUR BENCH, JAIPUR.

S.B.Civil Writ Petition No.941/2003..

State of Rajasthan & Anr.

Versus.

M/s.Satlaj Industries Ltd.& Anr.

Date of Order: 10.1.2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ.

Mr.B.S.Chhaba Dy.G.A for the petitioner.

Mr.Bhanu Pareek for the respondents.

Heard learned counsel for the parties.

The State of Rajasthan has in this writ petition challenged the order passed by the Board of Revenue dated 4th September,2002 by which it has allowed the revision petition of the respondent No.1 which was filed under Section 65 of Stamp Act assailing the order dated 10th April 1998 of Addl.Inspector General, Stamps, Rajasthan, Ajmer.

Respondent No.1 deposited consolidated stamp duty of Rs.2657812/-for transfer of the debentures subsequently when he discovered that stamp duty of Rs.10,58321.75 Paisa was paid in excess, he claimed refund of the same. The Inspector General, Stamps &

Registration however refused to refund such amount.

Learned Deputy Govt Advocate in assailing the judgment passed by the Board of Revenue has argued that if the respondent No.1 paid stamp duty in excess of what was payable there was no compulsion for the Government to refund the same. The Board could not in law direct the petitioner to refund such amount voluntarily deposited by the respondent No.1. Under the provisions of law, the Government cannot be required to refund stamp duty and the Board of Revenue has therefore committed an error of law in directing refund of the same. He relied on a division bench Judgment of this Court in D.B.Civil Writ Petition No.607/1992, M/S.Vinayak Marbles & Stones Pvt.Ltd. Vs. Board of Revenue & Others, decided on 14th October,1993.

On the other hand, Shri Bhanu Pareek learned counsel for the respondents has argued that the respondent No.1 had to deposit the demanded amount of stamp duty as per instructions of the Government of India dated 27th November,1998. He cited the letter dated 21.1.1998 in which attention of the Government of India was drawn by them to the opinion of their Solicitor General of India. In the opinion, it was clarified that the Government of Rajasthan correctly recommended that

consolidated stamp duty of Rs.1599437.75 was payable. It was stated that the delay in issuing of debentures certificate was due to non receipt of approval for consolidation of stamps duty which was effecting the rights of debentures holders. Therefore, they had to agree to pay demanded duty with the condition that in case, at later stage, it was held that correct duty leviable is only Rs.15,99430.75 ps or any other amount, they would have the right to claim refund under the relevant provisions of Stamp Act. The stamp duty was paid in excess owing to force of circumstances and under the specific direction of the Government of India. He therefore, prayed that the writ petition be dismissed.

I have heard learned counsel for the parties and perused the judgment passed by the learned Board of Revenue. The Board of Revenue has duly taken note of all those arguments which are being raised now before this Court and also perused the Division Bench Judgment cited Supra. The Board of Revenue has taken into consideration the instructions of the Government of India as also letter of the respondent No.1 where they agreed to pay the higher amount of Stamp Duty

reserving their right to claim refund of such amount if eventually lesser amount of stamp duty was found payable. In

fact letter written by the respondent No.1 to the Government of India indicates that the stand of the State Government where it had also maintained that consolidated stamp duty was payable @ 75.Ps per debenture of Rs.60/-each on debentures of 35,43,750/-but the respondents had to pay 26,27813/- only because specific direction given by the Government of India like any other administrative direction in exercise of its statutory power under clause of (b) of sub-section (1) of Section 9 of the Indian Stamp Duty Act 1899.

In the light of the above discussion, when eventually the amount payable as stamp duty was found lesser than what was actually paid by the respondent, the Government cannot refuse to refund such excess amount now. Even otherwise, when the respondents were directed by the Government to pay such amount thus by way abundant caution reserved their right to claim refund eventually the amount paid was found in excess. So far as the judgment relied on by the petitioner is concerned, that was a case where the petitioner had voluntarily on their

own deposited the amount when the matter was still pending and therefore, the facts of that case were entirely different and the judgment is therefore of no help to the petitioner in the present case.

The writ petition is therefore dismissed being devoid of merit with no order as to costs.

(Mohammad Rafiq)J.

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